IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8075 of 2001
With
SPECIAL CIVIL APPLICATION No. 4332 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE ANIL R. DAVE

HONOURABLE MS. JUSTICE R.M.DOSHIT

HONOURABLE MR.JUSTICE J.R.VORA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to civil judge ?

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SUDIP TRIPATHI & 1 - Petitioner(s)

Versus

STATE OF GUJARAT & 5 - Respondent(s)

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Appearance :

SPECIAL CIVIL APPLICATION No. 8075 of 2001

MR MUKUL SINHA for Petitioners
MR KAMAL TRIVEDI Advocate General with
Miss Sangita Vishen AGP for Respondent-State
NOTICE SERVED BY DS for Respondent(s) : 2,
MR PRAKASH K JANI for Respondent(s) : 3,
MR YN OZA Sr. Advocate with Ms. Sonal Shah for Respondent(s) : 4–6

SPECIAL CIVIL APPLICATION No. 4332 of 2006

MR YN OZA Sr. Advocate with Miss Sonal Shah for petitioners
MR KAMAL TRIVEDI Advocate General with
Miss Sangita Vishen AGP for Respondent-State
MR PRAKASH JANI for respondent No.3
MR MUKUL SINHA for Respondent no.4.

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CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE
and
HONOURABLE MS. JUSTICE R.M.DOSHIT
and
HONOURABLE MR.JUSTICE J.R.VORA
Date : 08—01-2007

CAV JUDGMENT (Per : ***HON'BLE*** Ms. JUSTICE R.M DOSHIT)

These two petitions, preferred under *Article* 226 of the Constitution of India, raise a common question whether a post graduate degree in Education [B.Ed.] can be said to be a valid qualification for appointment as Vidya Sahayak [*Primary School Teacher*] in the panchayat service of the State of Gujarat.

The primary education in the State of Gujarat is governed by the Bombay Primary Education Act, 1947 [hereinafter referred to as, "***the Act of 1947***"]. The State Government has, under its various orders, entrusted the function of primary education to the Primary Education Committees under the control of the District Panchayats / Municipal Corporations / Municipalities. The appointment of teachers in the schools run by the District Primary Education Committees is governed by the Gujarat Panchayat

Service [*Recruitment of Primary Teachers*] Rules, 1970 [hereinafter referred to as, "***the Rules***"] made by the State Government in exercise of the powers conferred by Section 323 of the Gujarat Panchayats Act, 1961. Clause (iii) of Rule 2 of the Rules defines the words, '**Qualified candidates**' to mean, "***candidates who have passed any one or more of the qualifying examinations***." The '**qualifying examination**' is defined in clause (iv) thereof to mean, "***an examination specified in Schedule-I***". Schedule-I to the Rules reads as under :-

> 1. ***Secondary School Certificate Examination of the Gujarat Secondary School Certificate Board together with a certificate of Primary Teachers' Certificate Examination;***
>
> ***2. Primary School Certificate Examination together with a certificate of Primary Teacher's Certificate Examination.***
>
> 3. ***Lok Shala Certificate Examination together with a certificate of Primary Teacher's Certificate Examination."***

Thus, passing of Primary Teachers' Certificate [PTC] Examination is a prerequisite for appointment as Primary School Teacher in Panchayat Service.

Under Government Resolution dated 11th June,

1998, with a view to resolving unemployment problem of PTC passed candidates in the State, the State Government had introduced Vidya Sahayak Scheme. By the said Resolution the State Government had resolved to fill up 20,000 vacancies under Vidya Sahayak Scheme with effect from that year. The said Resolution provided, *inter alia*, that appointment as Vidya Sahayak be made from amongst the candidates possessing qualifications of (i) SSC, PTC; (ii) Trained Graduates; and (iii) SSC, CP Ed. (*Certificate in Physical Education*). Though the Resolution is not explicit, we are informed that the candidate concerned was required to possess any one of the aforementioned qualifications. Clause-8 of the said Resolution provided that after two years of satisfactory service, the Vidya Sahayaks would be absorbed in service of the concerned Primary Education Committee on the posts of primary teachers falling vacant on account of superannuation. The remaining Vidya Sahayaks would be absorbed as Primary Teachers in the regular pay scale of primary teacher after completion of five years' service as Vidya Sahayak. Since the issuance of the said Resolution,

pursuant to the decision of the Division Bench of this Court dated 21st June, 2000 rendered in Special Civil Application No. 4005 of 1987, the State Government has passed a Resolution on 1st August, 2000 declaring that the trained Graduate [*i.e. Graduate B.Ed.*] shall not be a valid qualification for appointment as Vidya Sahayak. It is this Resolution dated 1st August, 2000 which is the subject matter of challenge in the above Special Civil Application No. 8075 of 2001.

The petitioners in Special Civil Application No. 8075 of 2001 are one – Sudip Tripathi, a trained Graduate and one-Gujarat Talimy Snatak Hit Rakshak Samiti which, according to the averments made in the petition, is an organization advancing the cause of trained-graduates [B.Ed.] for their appointment as trained teacher/vidya sahayak in primary schools and that the majority of the trained graduates {B.Ed.} in the State of Gujarat are its members. It is the claim of the petitioners that until the year 1977, B.Ed. Was considered to be the valid qualification for appointment as Primary Teacher and Primary Teachers possessing such qualification were considered Trained

Primary Teachers. By Circular dated 1st July, 1978 such trained graduates were exempted from passing PTC examination. Even this Court in several of its judgments has held that the qualification of B.Ed. Shall be a valid qualification for appointment as Primary Teacher and that such Primary Teachers were entitled to the pay-scale of a Trained Primary Teacher. One of the said judgments i.e., judgment dated 20th June, 1996 passed in the matter of ***Shreyas Education Trust v. Adyaru Dadubhai @ Sanat Kumar Ratilal*** *[Special Civil Application No. 1729 of 1995 : Decided by R.K Abichandani, J.]* was confirmed by the Division Bench in Letters Patent Appeal No. 1048 of 1996 on 22nd July, 1998. *Nevertheless*, another Division Bench [*Coram* : ***B.C Patel, J***., *as he then was* & ***P.B Majmudar, J.***]; unaware of the above referred Order dated 22nd July, 1998 made on Letters Patent Appeal No. 1048 of 1996, took a contrary view by its judgment dated 21st June, 2000 passed in Special Civil Application No. 4005 of 1987. This time, the Division Bench held that the primary teaching is a special skill and requires a special training. The training acquired in B.Ed. Course is not equivalent to the

training imparted in PTC course. The two are not comparable and one cannot be replaced for the other. In other words, a degree in Education [*B.Ed.*] cannot be said to be a valid qualification for appointment as a Primary Teacher. The *impugned* Resolution dated 1st August, 2000 came to be issued in compliance with the above referred judgment dated 21st June, 2000. The petitioners, therefore, prayed that in view of the earlier Division Bench order dated 22nd July, 1998, the later judgment dated 21st June, 2000 be held to be *per incurium* and in view of the two contrary views, the matter be referred to the larger Bench.

The matter came up for hearing before the learned Single Judge [Coram : ***C.K Buch, J.***]. The learned Single Judge, by his Order dated 8th November, 2001 referred the matter to the larger Bench as prayed for by the petitioners in the following terms.

> ***"whether a person holding the degree of Graduate B.Ed. Is a trained teacher or not and can be appointed as Vidya Sahayak or a primary teacher".***

The said reference came up for hearing before the Full Bench {*Coram* : ***Bhawani Singh***, ***C.J.***, and ***Messr.***

Justice J.N Bhatt & K.R Vyas, *as they were then*]. The Full Bench, by its judgment and order dated 3rd December, 2003, with the consensus of the learned advocates, answered the Reference as under :-

> ***"A person holding the degree of Graduate B.Ed., is a "trained teacher" for standards VI & VII but is not a trained teacher for standards I to V, with regard to his/her appointment as a primary teacher Vidhya Sahayak in a Primary School."***

The said judgment was challenged before the *Hon'ble* Supreme Court in Civil Appeal No. 838 of 2006 by a group of appellants possessing PTC qualification. The *Hon'ble* Supreme Court by its Order dated 6th January, 2006 *set-aside* the above referred decision dated 3rd October, 2003 of the Full Bench and remanded the matter to this Court. The *Hon'ble* Supreme Court observed that, "..***The decision of the Full Bench will therefore have to be reconsidered after hearing the appellants as well as the NCTE as well as the parties who are before it."*** Pursuant to the above order of the *Hon'ble* Supreme Court, the above Special Civil Application No. 8075 of 2001 stood revived. The petitioners have impleaded the National Council for Teachers' Education [hereinafter referred to as, "***the***

Council"]and the appellants before the *Hon'ble* Supreme Court as party respondents. The matter has come up before us for reconsideration, as directed by the *Hon'ble* Supreme Court.

Since the issuance of the aforesaid Resolution dated 1st August, 2000 and pending Special Civil Application No. 8075 of 2001, the Council has, in exercise of powers conferred upon it under Clause (d) (i) of Sub-section (2) of Section 32 read with Section 12 (d) of the National Council for Teacher Education Act, 1993 [hereinafter referred to as "***the Act of 1993***"] made the National Council for Teacher Education (*Determination of Minimum Qualifications for Recruitment of Teachers in Schools*) Regulations, 2001 {hereinafter referred to as, "***the Regulations***"}. Regulations 2 & 3 of the Regulations read as under :-

> ***2.[These Regulations shall be applicable for recruitment of teachers in all formal schools established, run or aided or recognized by Central or State Government and other authorities for imparting education at pre-school, nursery followed by first two years in formal school, elementary (primary and upper primary school), secondary and senior secondary stages.]***
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> ***3.(i) The qualifications for recruitment of teachers in educational institutions mentioned***

in Section 2 above shall be as given in the First and Second Schedules to these Regulations. The qualifications prescribed in the First Schedule shall apply for recruitment of teachers for teaching school subjects. The qualifications prescribed in the Second Schedule shall apply for recruitment of teachers for Physical Education.

(ii) For recruitment of teachers for co-curricular activities such as work experience, art education, etc., existing qualifications or such other qualifications as may be prescribed by the concerned government shall apply.

(iii) For promotion of teachers from one level to the next level of teaching, minimum qualification as given in the Schedules for the concerned level would be required."

Clause-III of the First Schedule to the Regulations reads as under :-

III	**Elementary** **(a) Primary** **(b)Upper Primary (Middle School Section)**	**(i) Senior Secondary School certificate or Intermediate or its equivalent; and** **(ii) Diploma or certificate in basic teachers' training of a duration of not less than two years.** **OR** **Bachelor of Elementary Education {B.El. Ed.}** **(i) Senior Secondary School certificate or Intermediate or its equivalent; and** **(ii) Diploma or certificate in elementary teachers training of a duration of not less than two years** **OR** **Bachelor of Elementary Education {B.El. Ed.}** **OR** **Graduate with Bachelor of Education (B.Ed.) or its equivalent.**
IV	Secondary/High School	Graduate with Bachelor of Education {B.Ed.} or its equivalent OR Four years' integrated B.Sc., B.Ed. Or an equivalent course.

Note :

1.For appointment of teachers for primary classes, basic teachers' training programme of 2 years' duration is required, B.Ed. is not a substitute for basic teachers' training programme.

2.**Some of the States are having basic teachers training course of one year duration only, while in some other State students passing secondary level examination are admitted to primary level teacher training courses. Such States may, by 2005, conduct basic teachers' training programmes of a duration of not less than two years with admission being open to Senior Secondary/Intermediate pass candidates. In the meantime candidates who have undergone basic teachers' training course of one**

year duration or were admitted to such training programmes after passing secondary level examination only may be given employment in the concerned States only.

Thus, under the Regulations, for the purpose of recruitment of teachers,the elementary education has been divided into two sections viz. Primary & Upper-Primary [*middle school section]*. For the purpose of recruitment to primary section, a candidate is required to possess basic teachers' training [*equivalent to primary teachers' certificate examination*]. Whereas, for upper primary section (*middle school section*), Post-Graduate Degree in Education (B.Ed.) also is considered to be a valid qualification. Standards I to V are treated as primary education; while standards VI & VII are considered as upper primary/middle school section. While deciding the reference, the Full Bench, as recorded hereinabove, answered the reference *adinvitem* in consonance with the Regulations.

The appellants before the Supreme Court have preferred the above referred Special Civil Application No. 4332 of 2006, a substantive petition seeking declaration that the PTC is the only valid

qualification for appointment as Vidya Sahayak. They have challenged the Government Resolution dated 5th June, 2004 seemingly passed in consonance with the Regulations and the above referred decision of the Full Bench in so far as the graduate B.Ed. has been made a valid qualification for appointment as Vidya Sahayak.

Mr. Sinha has submitted that the reference made by the learned Single Judge by Order dated 8th November, 2001 was wholly uncalled for. He has submitted that the judgment dated 21st June, 2000 of the Division Bench related to a primary school teacher appointed in a non-government, recognized, aided primary school governed by Schedule-F to the Primary Education Rules, 1951. Under the provisions made under the said Schedule-F, such primary school teachers are required to possess a PTC [*Primary Teachers' Certificate*]. The question was whether teachers who did not possess PTC but had a higher qualification of post-graduate degree in education [B.Ed.] can be said to be a trained primary teacher, and whether such teachers were entitled to higher pay-scale as a trained primary teacher. The Special

Civil Application No. 8075 of 2001 did not involve such an issue. He has submitted that the judgment dated 21st June, 2000 passed by the Division Bench in Special Civil Application No. 4005 of 1987 was entirely on different subject matter. The reference made to the larger Bench, therefore, was not competent. He has further submitted that even the Full Bench erred in answering the reference by consent of the learned advocates. The answer given by the Full Bench was not a considered decision of the Full Bench. He has submitted that as held in the matter of ***Satishchandra Bhailalbhai Shah & Ors. v. State of Gujarat*** [1984 (1) GLR 655] and in the matter of Vidya Vikas Primary School [*Special Civil Application No. 2903 of 1988* : Decided on 6th February, 1996 :: *Coram-**N.N Mathur, J.***} and the order in the matter of ***Shreyas Education Trust vs. Adyaru Dadubhai @ Sanat Kumar Ratilal*** {Special Civil Application No. 1729 of 1995 : Decided on 20th June, 1996 :: *Coram-**R.K Abichandani, J.***]; confirmed in Letters Patent Appeal No. 1048 of 1996, the qualification of post-graduate degree in Education {B.Ed.} is a qualification higher than that of PTC. A

person possessing such higher qualification cannot be considered ineligible for the purpose of appointment as Primary School Teacher and for that matter as Vidya Sahayak. He has submitted that the persons possessing higher qualification of post graduate B.Ed. are, therefore, entitled to be appointed as Vidya Sahayak. The action of the State Government in non-suiting such persons for appointment as Vidya Sahayak is erroneous, contrary to the aforesaid judgments and is not conducive to the larger interest of primary education.

Mr. Oza has contested the petition. He has supported the above referred judgment dated 21st June, 2000 passed by the Division Bench in Special Civil Application No. 4005 of 1987. He has also submitted that in the State of Gujarat there is one primary education from Standard I to Standard VII and there is no bifurcation of primary education as suggested by the Council. In absence of segregation of primary education in standards I to VI and in standards VI & VII, the Regulations cannot be effectively implemented. In such circumstances, there is no scope

for appointment of persons possessing post graduate degree in Education as Primary School Teacher or as Vidya Sahayak.

Mr. Jani has appeared for the Council. He has submitted that Section 12 of the Act of 1993 empowers the Council to lay down guidelines in respect of minimum qualification for a person to be employed as a teacher in Schools or recognized institutions. The Regulations are, therefore, in the nature of guidelines and are binding to the schools and the recognized institutions to that extent.

Learned Advocate General Mr. Trivedi has relied upon the Bombay Primary Education {*Gujarat Amendment*} Act, 2003 [*Gujarat Act No.3 of 2003*]. He has submitted that by the said amendment, the Act of 1947 has been amended to include the definition of the word "***Vidya Sahayak***" and to make provisions in connection with recruitment and service conditions of the Vidya Sahayaks. The provisions made in connection with the recruitment of Vidya Sahayaks from time to time have now been amended and compiled in the Government Resolution dated 5th June, 2004; as

modified by Government Resolutions dated 22nd July, 2004; 29th July, 2004; 3rd September, 2004 and 3rd February, 2005. He has submitted that by experience, it has been learnt that the teachers possessing post graduate degree in Education [B.Ed.] are better suited for teaching standards VI & VII students. It is, therefore, desirable that such teachers are recruited for teaching students in Standards VI & VII.

We are of the view that the submissions made by Mr. Sinha run contrary to the averments made and contentions raised in the petition. As recorded hereinabove, the petitioners have specifically referred to the above referred judgments/orders and have asked for a reference to the larger Bench. It was the petitioners who invited reference to a larger Bench and it was the learned advocates representing the parties who invited the order of the Full Bench on reference by consensus. It lies ill in the mouth of Mr. Sinha to submit that the learned Single Judge erred in making reference to the larger Bench by Order dated 8th November, 2001 and that the Full Bench erred in deciding the reference by consensus by its

judgment dated 3rd October, 2003. Besides, we have our own doubts whether the petitioners in Special Civil Application No. 8075 of 2001 have *locus standi* to bring the petition in the present nature. It is not demonstrated before us that the petitioner no.2 is a recognized organization or has a legal status to sue. The petitioner no.1 is an individual. He has not preferred the petition in a representative capacity nor has he obtained permission to sue in representative capacity. At the best, the petitioner no.1 can seek relief for himself. No such relief is claimed in the said petition. Nor it is the case of the petitioner no. 1 that he has sought employment as Vidya Sahayak or that he has been denied such appointment for want of requisite qualification.

In our view, this is one more avoidable litigation and multifarious proceedings caused on account of governmental indecisiveness and the lack of a firm policy decision. The primary education has been made a testing ground for various policies framed not necessarily in the interest of education or administration. Frequent changes, at times conflicting, tend to undermine the quality of

education – low as it is. As recorded hereinabove, the recruitment of teachers in primary schools under the control of the District Primary Education Committees is governed by the Rules made in that behalf. The said statutory provisions require that the person appointed as Pimary School Teacher shall possess a Primary Teachers' Certificate [PTC]. Thus, it is apparent that all along, under the Rules, the PTC has been considered to be the only valid qualification for appointment as Primary School Teacher. The "*Vidya Sahayak*" though sounds a separate cadre is essentially a cadre leading to absorption as a Primary School Teacher by sheer passage of time. Therefore, a person who is not eligible for appointment as primary school teacher cannot be eligible for appointment as Vidya Sahayak either. In our opinion, the Division Bench in Special Civil Application No. 4005 of 1987 had correctly considered the requirement for appointment of PTC candidates as primary school teachers and that should govern the field. Even the *Hon'ble* Supreme Court has, in its order dated 6th January, 2006 passed in Civil Appeal No. 383 of 2006 observed that, "..***It is also made***

clear that, in any event, only PTC trained teachers will be appointed for Classes I to V." In view of the above observation also, it is now the law of the land that only PTC trained teachers can be considered to be eligible for appointment as teachers in primary section of elementary education i.e., classes I to V.

The *impugned* Resolution dated 1st August, 2000 had been issued by the State Government in due compliance with the above referred judgment dated 20th June, 2000 passed by the Division Bench in Special Civil Application No. 4005 of 1987. By the said Resolution, the eligibility for appointment of Vidya Sahayak had been modified to non-suit the trained graduates i.e., the persons possessing post-graduate B.Ed. qualification. The Resolution dated 12th February, 2004 has been passed pursuant to the judgment dated 3rd December, 2003 passed by the Full Bench in Special Civil Application No. 8075 of 2001. By the said Resolution, the State Government has made provision for recruitment of Vidya Sahayaks in Standards VI & VII. It provides that such Vidya Sahayaks shall be trained graduates. Such trained graduates, on appointment, shall impart education in

Standards VI & VII and also in Classes I to V. The PTC primary teachers may also impart education in Standards VI & VII. The trained graduates shall take bridge training course as recommended by the Council. Since the said Resolution, the aforesaid eligibility criteria are compiled in the *impugned* Resolution dated 5th June, 2004. The said Resolution has been modified by the other Resolutions referred to hereinabove. However, as the said modifications are not relevant for the purpose of the present petitions, they are not dealt with. It is apparent that the above referred Resolutions dated 12th February, 2004 and 5th June, 2004 have been passed in contravention of the Rules as well as in contravention of the Regulations and also the judgment of the Full Bench pursuant to which the said Resolutions came to be passed. The Rules, as discussed hereinabove above, make PTC the only valid qualification for appointment as Primary Teacher. The Full Bench while answering the reference categorically held that a person possessing qualification of graduate B.Ed. is not a trained teacher for Standards I to V with regard to his/her

appointment as a primary teacher/Vidya Sahayak in a primary school. Even the *Hon'ble* Supreme Court has now, by its aforesaid Order dated 6th January, 2006, held that, "***the only PTC trained teachers will be appointed for Classes I to V.***" Nevertheless, the said Resolutions provide for appointment of graduate B.Ed. teachers as Vidya Sahayak for Classes I to V also. Similarly, the PTC teachers are called upon to take classes in Standard VI & VII also. In other words, the Regulations and the decision of the Full Bench have been completely contravened.

As to standard VI & VII classes, under the Regulations made by the Council, the teachers at the middle school level i.e., in Standards VI & VII may possess a primary teachers' training or in the alternative they may also be Bachelor of Education [B.Ed.]. But such teachers have to take basic training in primary teachers' training course. The State Government has, as a policy decision, decided that the teachers in Classes VI & VII of primary schools shall have the qualification of B.Ed. The State Government has, however, neither segregated Classes VI & VII education nor has issued guidelines

how the said policy decision shall be implemented where there is one primary education comprising standards I to VII.

As discussed hereinabove, as of now, the primary education in the State of Gujarat comprises Standards I to VII. The statutory Recruitment Rules provide for appointment of persons possessing Primary Teachers' Training Certificate as primary school teachers. Though the Council has proposed that for Standards VI & VII [*the upper primary school*] the persons possessing B.Ed. qualification also may be appointed as teachers, in absence of a separate upper primary/middle section and in absence of separate set of rules governing the recruitment of teachers in such upper primary or middle schools, the said guidelines cannot be implemented in its true spirit. We have already demonstrated that the Government Resolutions seemingly passed in compliance with the Regulations and the Full Bench judgment in fact contravene the Regulations as well as the judgment of the Full Bench and now also the order of the *Hon'ble* Supreme Court. Although it may be in the larger interest of the education that the guidelines issued

by the Council, a body of experts, be carried out in its true spirit, unless the State Government takes a policy decision to segregate the middle school from the primary school and makes appropriate recruitment rules governing appointment of teachers in such upper primary or middle school, the said guidelines cannot be implemented by passing a mere resolution in contravention of the statutory rules.

In the above circumstances, we are of the opinion that the primary teachers' training of two years' duration [*as suggested by the Council*] shall be the only valid qualification for appointment of teachers in primary schools : be it an appointment in regular pay scale or be it an appointment as Vidya Sahayak. The State Government may, however, consider appointment of candidates possessing post graduate B.Ed. degree for Standards VI & VII of the primary schools but only if and after the State Government segregates Standards VI & VII from Classes I to V by appropriate legislation and requisite guidelines. We answer the reference accordingly.

In view the above discussion, Special Civil

Application No. 8075 of 2001 is dismissed with cost. Rule is *discharged*. Special Civil Application No. 4332 of 2006 is allowed to the above extent. Rule is made absolute accordingly. The parties shall bear their own costs.

{Anil R. Dave, J.}{Ms. R.M Doshit, J.} {J.R Vora, J.}

*Prakash**